IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/02/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.818 OF 2003

K.P.S.Sathyamoorthy ... Petitioner

-Vs-

1.State of Tamilnadu,
through the Inspector of Police,
Protection of Civil Right Unit,
Virudhunagar,
Virudhunagar District.

2.The District Superintendent of Police,
Virudhunagar District,
Virudhunagar.

3.The Director General of Police,
Office of the Director General of Police,
Chennai.

4.Sri Kanchi Sangarachariar Sreemath
Jayendra Saraswathi Swamigal,
Kanchi Kamakodi Peedathipathy,
Sree Saradha Madam Sannithanam,
Kanchipuram. ... Respondents.

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief stated therein.

For petitioner : Mr.V.N.Santharam for
G.Vijayakumar&J.Yuvaraj Shekar

^For R.1 to R.3 : Mr.N.R.Chandran,
Advocate General and
Mr.I.Subramaniam,
Public Prosecutor for
Mr.O.Srinath, Govt.Advocate(crl.side)

For R.4 : Mr.K.Rajasekaran and
Mr.R.Natarajan

:O R D E R
The petitioner, alleging to be belonging to the Scheduled Caste being a member of the Hindu Pallan community and professing Hindu religious faith, has come forward to file the above criminal original petition praying to call for the records and quash the final report dated 1 4.11.2002 filed by the first respondent before the Court of Judicial Magistrate, Sivakasi in Crl.M.P.No.4936 of 2002 as illegal and improper and to issue necessary directions or orders for fresh investigation in respect of the complainant's complaint dated 28.10.2002 filed before the said Magistrate by any other competent investigating agency.

2. The petitioner would submit that on 26.10.2002 while he was going through the leading Tamil Daily magazines `Dina Thanthi' and `Dina Malar' circulated in his area, he read a press statement in the nature of a circular given by the 4th respondent/accused inviting all Hindu Religious communal associations to attend a meeting to be held at Madras in respect of giving clarification to the present enactment of the State of Tamil Nadu prohibiting compulsory religious conversion, which is an insult on all the members of the S.C. and S.T. communities within the public view and the entire statement is in the nature of creating enmity, hatred and ill-will between different religious classes, castes and communities.

3. The petitioner has also extracted the objectionable portion of the 4th respondent, which is extracted below:
** ,J tiuapy; fpw!;Jt kjj;jpy; cs;sth;fs; gog;g[ Kjy; vy;yh rYiffisa[k; mDgtpj;J tpl;L cj;jpnahfk; vd tUk; nghJ jhH;j;jgl;lth;fSf;F mjpfg;goahf cj;jpnahf tha;g;g[ bfhLf;fg;gLtjhy; jpUk;gt[k; ,e;Jthf khwp cj;j;pnahfj;jpw;F te;J bfhz;oUe;jdh;/

,e;J rkaj;ijr; nrh;e;j midj;J tFg;gpdiua[k;. $hjp r';f';f';fisa[k; miHj;J kj khw;w jilr;rl;l tpsf;ff; Tl;lk; eilbgWk;/ ,f;Tl;lk; vd; jiyikapy; eilbgWk;/ ,jpy; midj;J $hjp r';f';fSk; Fwpg;ghf mk;ngj;fhh; tHpia gpd;gw;Wk; bghJkf;fs; mtrpak; fye;J bfhs;sntz;Lk;

4. Extracting the above Tamil version of the publication, the petitioner would state that he presented the complaint against the fourth respondent/accused for offences punishable under Sections 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, under Section 505(2) of the IPC and Section 3(g) of the Religious Institutions (Prevention of Misuse) Act before the Judicial Magistrate, Sivakasi, who took the complaint on file, numbered the same as Crl.M.P.No.4936 of 2002 and directed the first respondent to investigate the complaint under Section 156(3) Cr.P.C. and to submit a final report thus forwarding the said complaint to the first respondent on the very same day.

5. The petitioner has further stated that since nothing was heard from the first respondent, he appeared before him on 9.11.2002 and enquired about the stage of the case, when he was given to understand that the said complaint was to be sent to the Assistant Director of Prosecution at Virudhunagar seeking opinion regarding the sustainability of the complaint and registering the case for investigation and the final report would be submitted

before the Court. During the said meeting, the petitioner is also alleged to have informed the first respondent of the mandatory provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 followed by which he also submitted an explanatory letter dated 13.11.2002 by registered post; that in spite of receipt of the said letter on 14.11.2002, the first respondent did not consider anything stated therein and filed the final report accompanied by the legal opinion of the Assistant Director of Prosecution before the Magistrate to the effect that the petitioner's complaint did not disclose or satisfy the ingredients of the offences alleged against the fourth respondent and therefore no investigation was necessary, based on which the Judicial Magistrate, Sivakasi passed an order on 18.11.2002 stating that the petitioner's complaint in Crl.M.P.No.4936 of 2002 stood re jected.

6. On rejection of his complaint by the Judicial Magistrate, Sivakasi in the manner aforementioned, the petitioner, stating that the final orders passed in Crl.M.P.No.4936 of 2002 by the Judicial Magistrate, Sivakasi are prima facie illegal and liable to be quashed, has come forward to file the above criminal original petition on certain grounds as brought forth in the grounds of memorandum such as (i) that the first respondent has no statutory right or power or authority to investigate the complaint for alleged offences under the S.C.&S.T. ( Prevention of Atrocities) Act as per Rule 5 of the SC.&S.T.(Prevention of Atrocities) Rules, 1995; (ii) that for the alleged offence under the S.C.&S.T.(prevention of Atrocities) Act along with the other offences, the investigation could be carried out by the first respondent in view of the statutory prescription under Rule 7 of the said Rules.

7. Citing two decided cases, the first one reported in 1998-1-MWN ( Crl.)-259 = 1998(I)CTC 276 (A.SASIKUMAR vs. THE SUPERINTENDENT OF POLICE, VILLUPURAM) and the second one reported in 1998-1-MWN (Crl.)349 (MRS.MARIAMMAL vs. STATE OF TAMILNADU) wherein a learned single Judge of this Court has held that `within the meaning of Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1 995, the Inspector of police has no power or jurisdiction to investigate the matter arising out of Act 33 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and that the investigation should be done by an Officer not below the rank of a Deputy Superintendent of Police whether the allegations are true or otherwise', and giving expression to the legality of Rule 7 of the said Rules, Sections 157(1)(b) and 157(2) of the Cr.P.C. and Section 3 of the S.C.& S.T. (Prevention of Atrocities) Act, the petitioner would pray to the relief extracted supra.

8. During arguments, the learned counsel appearing on behalf of the petitioner, besides laying emphasis on those averments of the above criminal original petition, would also submit that the Assistant Director of Prosecution cannot give his opinion as it is in the case in hand; that it is a case under the Special Act and a special prosecution should have been contemplated and investigated into which the respondents 1 to 3 have failed to do; that the Inspector of Police cannot investigate a case arising out of

S.C.&S.T. (Prevention of Atrocities) Act, but only a Deputy Superintendent of Police and Officers above in rank could do the investigation as per the relevant provisions of the said Rules. At this juncture, the learned counsel for the petitioner would submit the following judgments:

1. 1999(III) CTC 464 (P.ALAGARSAMY vs. STATE OF TAMIL NADU REP.BY SECRETARY, HOME DEPARTMENT, CHENNAI-9 AND FOUR OTHERS.

2. AIR 1992 SC 604(STATE OF HARYANA AND OTHERS vs. CH.BHAJAN LAL AND OTHERS)

3. 1982 CRI.L.J. 872 (SHANTABAI AND ANOTHER vs. STATE OF MAHARASHTRA)

9. In the first judgment cited above, it is a case of the victim lodging FIR for offences under Section 3(x)(i) of S.C. & S.T. ( Prevention of Atrocities) Act, 1989 r/w.Sections 323,341,355 and 147 against 5 persons and the DSP deleted offence under Section 3(x)(i) of 1989 Act and directed the Inspector to take further action for IPC offences, but no intimation was given to the informant about the dropping of offence under S.C.&S.T. (Prevention of Atrocities) Act, 1989 and the High Court held that the law enforcing agencies were unduly hasty in dropping the main offences and acted in total disregard to procedure and setting aside the order of conviction, directed the S.P. to appoint some other D.S.P. to conduct fresh investigation under his direct supervision and issued further directions to follow proper procedure.

10. In the second judgment cited above, the Honourable Apex Court has held:

"In following categories of cases, the High Court may in exercise of powers under Art.226 or under S.482 of Cr.P.C. may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases.
1.Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2.Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1 ) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

3.Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4.Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under

S.155(2) of the Code.
5.Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6.Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7.Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

It has been further held in this judgment that
"Where the Order directing an Inspector was one word under " investigate" in respect of offences under S.5(1)(e) of Corruption Act and Ss.1 61 and 165 of Penal Code, the Inspector was not clothed with valid legal authority to take up the investigation and proceed with the same within the meaning of S.5A(1) of the Prevention of Corruption Act."

11. In the last judgment cited on behalf of the learned counsel for the petitioner, a Division Bench of the Bombay High Court has held:

"Section 7(1)(d) of the Protection of Civil Rights Act deals with insult or attempt to insult on the ground of untouchability a member of Scheduled Caste. The word `insult' in the legal parlance means to treat with offensive disrespect or to offer indignity to a person. The significance to be attached to the words used would obviously depend on the facts and circumstances of each case, the occasion and the manner in which the words are used and person to whom they are addressed. Any act or speech meant to hurt the feelings or self-respect of another or to treat a person with insolence or contempt by words or action would obviously amount to an insult. When a person belonging to higher caste offers insult to a Harijan or to a person belonging to Scheduled Caste on the ground of his caste, then the said act is presumed to fall within the inhibition contained in the section. In such cases, the burden would shift on the accused to establish that the act alleged to be committed was not committed on the ground of untouchability but on some other ground. The quantum and nature of proof required to displace the presumption must vary according to the facts and circumstances of each case."

The learned counsel would end up his arguments praying to either allow the criminal original petition or at least order fresh investigation to be done.

12. In reply, the learned Advocate General, Tamil Nadu appearing on behalf of the respondents 1 to 3 along with the learned Public Prosecutor, High Court, Madras, in his crisp arguments would submit that neither the petition could be allowed nor fresh investigation be ordered in the case in hand and once the Magistrate accepts the report made by the Assistant Director of Prosecution, there is no point in going back much less ordering fresh

investigation since the order has been passed based on the legal position of the subject. The learned Advocate General would further submit that the inherent powers conferred by law upon this Court under Section 482 of the Cr.P.C. could be made use of only for limited purposes, such as abuse of process of law; that the extract of the newspaper given in the complaint does not at all contemplate any penal action much less under the penal provisions of the S.C. & S.T. (Prevention of Atrocities) Act as it has been wrongly

invoked in the circumstances of the case. On such arguments, the learned Advocate General would pray to dismiss the above criminal original petition confirming the order of the learned Magistrate.

The learned counsel appearing on behalf of the fourth respondent would also adopt the arguments of the learned Advocate General regarding the subject matter.

13. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for all the parties as mentioned above, what comes to be known is that the petitioner alleging that he belongs to the Scheduled Caste and that the statement published in Tamil Daily Magazines `Dina Thanthi' and ` Dina Malar' alleged to have been uttered by the 4th respondent in the nature of creating enmity, hatred and ill-will between different religious classes, castes and communities, has filed a private complaint before the learned Judicial Magistrate, Sivakasi as against the fourth respondent for the offences punishable under Sections 3(1)(x) of the S.C.&S.T. (Prevention of Atrocities) Act, 1989, Section 505(2) IPC and Section 3(g) of the Religious Institutions (Prevention of Misuse) Act and the said Court has referred it to the first respondent under Section 156(3) Cr.P.C. directing him to investigate the complaint and submit a final report as per its order dated 30.10.2002 and the first respondent having obtained the opinion of the Assistant Director of Prosecution concerned, has filed his final report along with the legal opinion of the Assistant Director of Prosecution on 14.11.2002 before the said Magistrate and since the Magistrate finding that the petitioner's complaint did not satisfy the ingredients of the offences alleged against the 4th respondent, has rejected the complaint of the petitioner, testifying the validity of which the petitioner has come forward to institute the above criminal original petition seeking the reliefs extracted supra.
14. At the outset, it is necessary to discuss two aspects of the case, the first one legal and procedural and the second one factual which would decide the case of the petitioner ultimately. The legal cum procedural aspect being one concerned with Rules 5 to 7 of the S.C. & S.T (Prevention of Atrocities) Rules which are relevant for consideration and in fact the petitioner also heavily relies on these Rules, not only laying emphasis on these Rules but also extracting from already decided cases, which have been extracted supra.

15. The import of Rules 5 to 7 of the S.C. & S.T. (Prevention of Atrocities) Rules could be mentioned that an Officer in charge of a police station on receipt of every information relating to the commission of an offence under the Act, shall reduce the same to writing and may send the

substance of such report in writing by post to the Superintendent of Police, who after investigation either by himself or by a Police Officer not below the rank of Deputy Superintendent of Police shall make an order in writing to the officer-in-charge of the concerned Police Station to enter the substance of that information to be entered in the book to be maintained by that Police Station; that if any atrocity is committed on the members of the S.C. and S.T. communities within his jurisdiction, the District Magistrate or Sub Divisional Magistrate or D.S.P. shall immediately visit the place of occurrence to assess the extent of atrocity, loss of life or damage to the property and submit a report forthwith to the Government besides doing such other things as contemplated under Rule 6 and under Rule 7. The Investigating Officer shall be a Police Officer not below the rank of a Deputy Superintendent of Police and the said Investigating Office shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time and on investigation, the said Officer shall submit the report to the Superintendent of Police who would in turn forward the same to the Director General of Police of the State Government; that the Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the officer-in-charge of prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the Investigating Officer.

16. While such being the procedures contemplated by the Rules prescribed thereunder, it is a mystery as to why the petitioner has not chosen to follow these procedures so as to make his complaint before the authorities concerned, but bypassing the procedures, the petitioner has gone straight to the Magistrate in filing the private complaint.

` 17. On the part of the Magistrate too, without having regard to these Rules, he has entertained the complaint filed by the petitioner and has forwarded the same as though it is like the other complaints normally being filed before him, which are general in nature. Since the S.C. & S.T. (Prevention of Atrocities) Act being a Special Act, having the over-riding effect on other general laws, the Magistrate should have outright rejected the complaint directing the petitioner to seek resort to the relevant rules of procedures established by law and since the Magistrate did not adopt the procedures contemplated thereunder law, it has given way for many precipitations.

18. On the part of the petitioner too, though he now comes forward to allege that the Investigating Officer must be the Deputy Superintendent of Police and not an Inspector of Police, he himself has not chosen to file the complaint in the manner contemplated under the Rules, but for no reason assigned, has chosen to file the private complaint before the Magistrate.

19. When the Rules contemplate as to where the complaint is to be lodged, without trying that source and lodging the complaint before that particular authority before whom the complaint would lie, the petitioner, for no reason assigned, has filed the same before the Magistrate seeking

direction, which is irregular, as a result of which every thing has gone wrong in the whole affair connecting to the complaint.

20. Coming to the factual aspect of the case, the petitioner does not seem to have been an aggrieved party, since the petitioner is born, bred and continues to be a Hindu S.C. man whereas the remark said to have been uttered by the 4th respondent is only against those who enjoy the privileges as Christians being members of the Christian religion and got converted to the Hindu religion for the purpose of enjoying the job opportunities. Since the petitioner does not fall under this category, he is not the aggrieved party entitled to question the validity of such a remark said to have been made on the part of the 4 th respondent since he does not have the locus standi to do so.

21. Secondly, the statement alleged to have been made by the 4th respondent is based on facts which are not at all either denied or rebutted by the petitioner in his complaint stating that no such conversion has taken place and that it is a false statement. Even taking for granted that the 4th respondent has uttered the said remarks, extracted in Tamil in the preceding paragraph, regarding certain members of Christian religion getting themselves converted into Hinduism for the purpose of enjoying the job opportunities in the past. Since being a fact, neither this statement is denied nor established as false on the part of the petitioner in his pleadings nor even an attempt has been made by him to the said effect and calling a spade a spade, cannot be an insult to the S.C. and S.T. community men nor the statement could create enmity or hatred or ill-will between different religious classes, which is a reality and therefore neither there is anything wrong nor could the petitioner, who is not that category having enjoyed the privileges as a Christian and getting himself converted as a Hindu for job opportunities, can have the locus standi to testify the veracity of the statement.

22. Further, since the case of the petitioner is that the 4th respondent has committed the offences punishable under Sections 3(1)(x) of the S.C.&S.T.(P.A.)Act, 1989, 505(2) IPC and Section 3(g) of the Religious Institutions (Prevention of Misuse) Act, 1988, it has become incumbent on the part of this Court to extract the above three Sections:

"Section 3 of the S.C.&S.T.(P.A.)Act,1989: PUNISHMENT FOR OFFENCES OF ATROCITIES
(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -
(i) ...
(ii) ...
(iii) ...
(iv) ...
(v) ...
(vi) ...
(vii) ...
(viii) ...
(ix) ...
(x)intentionally insults or intimidates with intent to humiliate a member of a

Scheduled Caste or a Scheduled Tribe in any place within public view."

"Section 505(2) IPC: STATEMENTS CREATING OR PROMOTING ENMITY, HATRED OR ILL-WILL BETWEEN CLASSES: (2) Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both."

"Section 3(g) of the Religious Institutions (Prevention of Misuse) Act, 1988:
"3. PROHIBITION OR USE OF RELIGIOUS INSTITUTIONS FOR CERTAIN PURPOSES - No religious institution or manager thereof shall use or allow the use of any premises belonging to, or under the control of, the institution -
(a) ...
(b) ...
(c) ...
(d) ...
(e) ...
(f) ...
(g) for the doing of any act which promotes or attempts to promote disharmony of feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or ..."

23. So far as the first and second of the above Sections viz. Section 3(1)(x) of the S.C.&S.T.(P.A.)Act, 1989 and Section 505(2) IPC are concerned, `intention' is the pre-condition for the commission of the offence under these Sections. Nowhere the petitioner has made it available the required `intention' on the part of the 4th respondent to indulge in such offences mentioned therein nor has he at least made it clear as to the object sought to be achieved by the fourth respondent in making such statements or remarks so as to apply these Sections for the imputation alleged to have been made on the part of the fourth respondent.

24. So far as the third above Section i.e. Section 3(g) of the Religious Institutions (Prevention of Misuse) Act,1988 is concerned, it requires the premises or the religious institution i.e. the Kanchimatt to have been used to promote disharmony or feeling of enmity or hatred or ill-will between different religious, racial, language or religion groups or castes or communities. Here again, the Section requires the use of the premises or religious institution as a place or instrument for promoting disharmony or hatred or ill-will. That the framers of law have not intended an isolated event or utterance but made use of the term `use', which would mean habitual, well-designed with continuity making use of the premises or institution for repeated commission of the act in the usual manner and therefore an isolated or casual utterance or reference made cannot be construed to mean using the premises or the religious institution since the term `use', at this juncture, has got wider connotation in the context of the case. Neither the remarks alleged to have been uttered by the fourth

respondent could be termed as objectionable even considering that the said respondent actually uttered the same nor at the stretch of imagination could it be construed that the fourth respondent is using the ` religious institution' to promote disharmony of feelings or hatred or illwill much less between different religious, racial, language or regional groups or castes or communities and therefore it could only be decided that the petitioner has cast his imagination too far in contemplating that an offence could be made out under this provision of law. Moreover, a reading of the remarks would only mean that it has come out of the noble mind and with the honest intention to promote harmony among different groups of the Hindu religion, particularly those Associations which follow the footsteps of Dr.Ambedkar.

25. All these Sections could be brought into play only when factually a case is made out on the face of the complaint particularly in the case in hand pertaining to the statement alleged to have been made by the 4th respondent. This statement is alleged to have been published in `Dina Thanthi' and `Dina Malar' Tamil dailies, but the petitioner has not even made the Editors and Publishers of these newspapers as parties to the proceedings, who ought to have been impleaded as parties to the proceeding if the statement is objectionable since the newspapers are not supposed to carry out such objectionable or illegal utterances of, whomsoever is the maker of the statement. From the very fact that the petitioner has not impleaded those persons as parties to the proceedings would not only mean that they are not objectionable statements but also the petitioner with some ill-motivated designs and at the instigations of those who have some basic grievances or hatred or ill-will or motive against the 4th respondent has come forward to initiate these proceedings. Therefore, besides being the petitioner not having the locus standi to question the validity of such paper publication taking it as genuine and made with intent to injure the religious and caste feelings, absolutely no case worth to be considered under the relevant Sections of law has been put up by the petitioner and therefore this Court is left with no choice but to arrive at the only irresistible conclusion that no valid case has been put up by the petitioner nor is there any pith or substance in the averments of the petition worth considering for any purpose much less warranting granting of the relief sought for and it could be safely concluded that the Court below has done nothing than what is required in the circumstances of he case in rejecting the complaint filed by the petitioner by its order dated 18.11.2002. Needless to mention that the above criminal original petition equally becomes liable to be dismissed.

In result,
(i) the above Criminal Original Petition is dismissed.
(ii)Consequently, the alternative relief of the petitioner for fresh investigation in respect of the petitioner's complaint dated 28.10.20 02 also does not arise at all and the same is also dismissed.

Index: Yes
Internet: yes

Rao

To

1.The Inspector of Police,
Protection of Civil Right Unit,
Virudhunagar,
Virudhunagar District.

2.The District Superintendent of Police,
Virudhunagar District,
Virudhunagar.

3.The Director General of Police,
Office of the Director General of Police,
Chennai.

4.The Public Prosecutor,
High Court, Madras.